

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 GEORGIY VERDIYAN,

11 Plaintiff,

v.

12 NANCY A. BERRYHILL, Acting  
13 Commissioner of Social Security

14 Defendant.

15 CASE NO. C15-1680-JCC

16 ORDER GRANTING PLAINTIFF'S  
17 MOTION FOR EAJA FEES

18 This matter comes before the Court on Plaintiff Georgiy Verdiyan's motion for Equal  
19 Access to Justice Act attorney fees pursuant to 28 U.S.C. § 2412 (Dkt. No. 21). Having  
20 considered the parties' briefing and the relevant record, the Court finds oral argument  
21 unnecessary and hereby GRANTS Plaintiff's motion for the reasons explained herein.

22 **I. BACKGROUND**

23 Plaintiff challenged the Social Security Commissioner's finding of nondisability. (*See*  
24 *generally* Dkt. No. 3.) The Commissioner opposed the motion, and this Court reversed and  
25 remanded the Commissioner's final decision for further proceedings. (*See* Dkt. Nos. 15, 18.) The  
26 instant motion followed to seek attorney fees pursuant to the Equal Access to Justice Act  
(EAJA). (Dkt. No. 21.)

1 Plaintiff asks this Court to authorize attorney fees in the amount of \$8,390.17. (Dkt. No.  
2 28 at 6.) Plaintiff states that 30.4 hours of attorney billable hours were expended between Eitan  
3 Yanich and Noah Yanich<sup>1</sup>—16.2 hours and 14.2 hours, respectively. (Dkt. No. 21-3.) The  
4 Commissioner concedes Plaintiff’s request for attorney fees is appropriate, but argues the  
5 amount requested is not reasonable. (Dkt. No. 24 at 2–3.)

6 **II. DISCUSSION**

7 Because there is no disagreement as to whether Plaintiff is entitled to reasonable attorney  
8 fees, the Court must determine the proper amount of attorney fees. “[T]he amount of the fee, of  
9 course, must be determined on the facts of each case” starting at the number of hours expended  
10 on litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 429–33 (1983). Although there is no explicit  
11 hour range established by the Ninth Circuit as reasonable, the Sixth Circuit has held that  
12 expending 30–40 hours on a Social Security case is reasonable. *Hayes v. Sec’y of Health and*  
13 *Human Servs.*, 923 F.2d 418, 420 (6th Cir. 1990); *see also Pete v. Colvin*, Case No. C15-5391-  
14 RSM, Dkt. No. 23 at 1, Dkt. No. 24 at 8 (W.D. Wash. 2009) (finding expending 41.0 hours on a  
15 similar Social Security case was reasonable). If the Government disputes the reasonableness of  
16 the fee, it “has the burden of rebuttal that requires submission of evidence to the district court  
17 challenging the accuracy and reasonableness of the hours charged or the facts asserted by the  
18 prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397–98 (9th  
19 Cir. 1992).

20 Here, the Commissioner suggests the case was overstaffed, and therefore the hours  
21 requested are unreasonable. (Dkt. No. 24 at 4.) However, the 30.4 hours expended between Eitan  
22 and Noah are consistent with other reasonable attorney fees requests. *See Hayes*, 923 F.2d at  
23 420; *Pete v. Colvin*, Case No. C15-5391-RSM, Dkt. No. 24 at 8. The Commissioner does not  
24 provide a compelling argument or offer any support that utilizing the services of multiple  
25 attorneys justifies a finding that the case is overstaffed or the hours expended are unreasonable.

26 <sup>1</sup> The Court will refer to Plaintiff’s counsel by their first names for clarity and means no disrespect.

1       The Commissioner also argues Noah's hours are unreasonable because Noah is not  
2 admitted to practice in Washington State or the Western District of Washington, has not shown  
3 that he would be eligible for admission to this Court *pro hac vice*, and only performed a limited  
4 role. (Dkt. No. 24 at 2–3.) As such, the Commissioner maintains Noah should not be  
5 compensated at the prevailing hourly attorney rate (\$192.68), but rather at an hourly paralegal  
6 rate (\$100). (*Id.* at 7.) The Court agrees with the Commissioner that the Ninth Circuit has  
7 recognized that different types of work are billed at different rates. (Dkt. No. 24 at 4) (citing  
8 *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009); *In re Hunt*, 238 F.3d 1098, 1105 (9th  
9 Cir. 2001)). However, the Court disagrees that Noah should be precluded from an attorney  
10 hourly rate.

11       Both parties cite to *Winterrowd v. American General Annuity Insurance Company*, 556  
12 F.3d 815 (9th Cir. 2009), which the Court finds instructive. In *Winterrowd*, the Ninth Circuit  
13 reversed the Central District of California's denial of attorney fees. The Ninth Circuit found  
14 attorney fees to be reasonable where the attorney "(a) [was] not a member of the California state  
15 bar, (b) [did] not physically appear in the Central District, (c) [did] not sign pleadings in a case  
16 before the Central District, (d) [had] minimal contact with clients and no direct contact with  
17 opposing counsel in the case, (e) [was] supervised by [a member of the California state bar], and  
18 (f) [was] not admitted *pro hac vice* in the case, but no evidence in the record show[ed] that he  
19 would not have routinely been so admitted had he applied." *Winterrowd*, 556 F.3d at 817.

20       The facts in this case are nearly identical to *Winterrowd*. Noah is a qualified attorney who  
21 graduated *cum laude* from the University of Michigan Law School and is admitted to many  
22 federal and state courts. (Dkt. No. 28 at 3.) Under Western District of Washington Local Rule  
23 83.1, Noah would be eligible for routine admission *pro hac vice*. Moreover, it is also worth  
24 noting that Noah has been awarded fees at an attorney hourly rate in over 100 EAJA attorney  
25 fees cases. (Dkt. No. 28 at 2.) His requested hourly rate, \$192.68, is the Ninth Circuit's statutory  
26 maximum for attorneys. Ninth Circuit Rule 39-1.6; *Thangaraja v. Gonzales*, 428 F.3d 870, 876

1 (9th Cir. 2005). Thus, the Commissioner's arguments against awarding Noah an attorney hourly  
2 rate do not persuade the Court that the amount Plaintiff requests is unreasonable. The motion for  
3 attorney fees is GRANTED.

4 **III. CONCLUSION**

5 For the foregoing reasons, the motion for attorney fees (Dkt. No. 21) is GRANTED.  
6 Included in this attorney fees award, Plaintiff also requests the additional fees incurred while  
7 preparing the reply brief for this motion. *See Cmm'r, I.N.S. v. Jean*, 496 U.S. 154, 163–66 (1990)  
8 (holding that attorney fees should be awarded for additional time reasonably spent defending the  
9 application for EAJA attorney fees). But, it is unclear from the briefing if the attorneys expended  
10 9.7 hours or 10.2 hours on the reply brief. (*See* Dkt. No. 28 at 7.) Additionally, no documentation  
11 was submitted detailing the hours worked on the reply brief. Therefore, Plaintiff is ORDERED to  
12 submit detailed documentation of the hours worked to prepare the reply brief for this motion  
13 within two weeks. Once those are submitted, the Court will award the full attorney fees amount  
14 requested.

15 DATED this 18th day of April 2017.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE